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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**WESTERN NATIONAL ASSURANCE
COMPANY**, a Washington corporation,

Plaintiff,

v.

**BUDGET TOWING & TRANSPORT
INC.**, an Oregon corporation, **ROBERT
JAMES LONGORIA**, and **GARY B.
SPENCER**

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Declaratory Judgment Act (28 U.S.C.
§ § 2201-2202)

**DEMAND FOR JURY TRIAL ON ALL
ISSUES TRIABLE BY JURY**

Western National Assurance Company ("Western National") hereby alleges as follows:

PARTIES

1. Plaintiff, Western National Assurance Company ("Western National"), is a Washington corporation with its principal place of business in the state of Washington. At all relevant times, Western National is an insurer authorized to conduct and

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conducting insurance business in the state of Oregon.

2. Defendant Budget Towing & Transport Inc. ("Budget Transport") was and is at all relevant times an Oregon corporation.

3. Upon information and belief, Defendant Robert James Longoria ("Longoria") was and is a citizen of the state of Oregon and the owner of Budget Transport.

4. Upon information and belief, Defendant Gary B. Spencer ("Spencer") was and is a citizen of the state of Oregon.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1332, because there is complete diversity of citizenship between the parties. The amount in controversy exceeds, exclusive of interests and costs, the sum of \$75,000.00.

6. Venue is appropriate in the District of Oregon, Portland Division, under 28 U.S.C. § 1391, because all or a substantial part of the events giving rise to this dispute occurred here.

CLAIM FOR RELIEF

(Declaratory Judgment)

7. Western National issued Policy No. CPP 1112160 02 to Budget Towing & Transport Inc. as the named insured for the policy period February 26, 2017 to February 26, 2018 ("the Policy"). The Policy provides certain insurance coverage to Budget Towing and Longoria pursuant to all of the terms, definitions, conditions, exclusions and endorsements, whether or not fully stated herein, but the proof of the claims made in the Lawsuit are excluded from insurance coverage as set forth in Paragraph 10 below. Upon information and belief, Defendants Longoria and Spencer may claim an interest in

the Policy in some capacity.

8. Spencer filed a lawsuit entitled *Gary B. Spencer v. Budget Towing and Transport, Inc., and Robert James Longoria*, Multnomah County Case No. 17CV48713 naming Budget Towing and Longoria as defendants (“the Lawsuit”). The Lawsuit alleges, among other allegations, that a motor vehicle accident took place on or about May 26, 2017, at a time when Spencer was operating a tow truck maintained by defendant Budget Towing. The Lawsuit further alleges that Spencer was employed as a tow truck driver and that Budget Towing, through its agent, defendant Longoria, enjoyed the benefits of employment services provided by Spencer. Plaintiff’s Complaint in the Lawsuit is attached hereto as Exhibit 1 and incorporated herein.

9. Western National is defending the Lawsuit under a complete reservation of all its rights under the Policy.

10. The Policy does not require Western National to indemnify Budget Towing or Longoria for any potential settlement or judgment that could result from the Lawsuit for one or more of the following reasons

(a) Insurance coverage is excluded by Exclusion B. 3 Worker’s Compensation which excludes insurance coverage for:

Any obligation for which the “insured” or the “insured’s” insurer may be held liable under any workers’ compensation, disability benefits or unemployment compensation law or any similar law.

(b) Insurance coverage is excluded by Exclusion B. 4 Employee Indemnification And Employer’s Liability which excludes insurance coverage for:

“Bodily injury” to:

a. An “employee” of the “insured” arising out of and in the course of:

- (1) Employment by the “insured” ; or
 - (2) Performing the duties related to the conduct of the “insureds” business, or
- b. The spouse, child, parent, brother or sister of that “employee” as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the “insured” may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to “bodily injury” to domestic “employees” not entitled to workers’ compensation benefits or to liability assumed by the “insured” under an “insured contract”. For the purposes of the Coverage Form, a domestic “employee” is a person engaged in household or domestic work performed principally in connection with a residence premises.

11. An actual justiciable controversy exists between Western National and Defendants concerning the existence of insurance coverage for any potential settlement or judgment that could result from the Lawsuit.

12. This declaratory judgment action is consistent with *North Pacific Insurance Company v. Wilson’s Distributing Service, Inc.*, 138 Or. App. 166, 908 P.2d 827 (1995) because it does not put the insured defendants, Budget Towing and Longoria, in any conflictive positions with regard to the matter and the Lawsuit.

13. Pursuant to 28 USC § 2201, Western National is entitled to a declaratory judgment from this Court that Western National has no obligation under the Policy to pay or provide insurance coverage for any potential judgment that could result from the Lawsuit.

PRAYER FOR RELIEF

WHEREFORE, Western National prays for judgment as follows:

1. Declaring the rights, duties, obligations, status and other legal relations of the parties, including a declaration that no insurance coverage exists under the Western National Policy for the claims made in the Lawsuit, and that Western National has no obligation to pay or provide insurance coverage for any potential settlement or judgment that could result from the Lawsuit;

2. For Western National's recoverable costs and disbursements incurred herein; and

3. For such further relief that the Court may deem just and proper.

Dated this 29th day of December, 2017.

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